

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**

11 **JOHN W. SIGLER,**

12
13 **Plaintiff,**

14 **v.**

15
16 **JORGE GONZALEZ; USAA**
17 **CASUALTY INSURANCE COMPANY;**
18 **INTERINSURANCE EXCHANGE OF**
19 **AUTOMOBILE CLUB OF**
20 **SOUTHERN CALIFORNIA;**
21 **IMPERIAL BODY SHOP, INC.; and**
22 **DOES 1 to 99, inclusive,**

23 **Defendants.**

Case No.: SACV 22-02325-CJC (JDEx)

**ORDER TO SHOW CAUSE WHY
PLAINTIFF'S FEDERAL CLAIMS
SHOULD NOT BE DISMISSED**

24 On February 28, 2020, Defendant Jorge Gonzalez rear-ended *pro se* Plaintiff John
25 W. Sigler's car while Sigler's son Alexander was driving it. (Dkt. 1, Ex. A [Complaint]
26 ¶¶ 1, 6.) Gonzalez was at fault. (*Id.*) In this case, Plaintiff asserts claims against
27 Gonzalez, Interinsurance Exchange of Automobile Club of Southern California ("the
28 Exchange," Gonzalez's automobile insurer), USAA Casualty Insurance Company

1 (“USAA,” Plaintiff’s insurer), Imperial Body Shop, Inc. (“IBS”), and unnamed Does
2 stemming from the collision, repair, and insurance coverage. (*Id.* ¶¶ 1–10.) In general,
3 Plaintiff alleges that “[b]oth insurance companies, their employees,” and IBS “have
4 engaged in criminal acts of insurance fraud, wire fraud, mail fraud, extortion, and witness
5 tampering with the common goal to avoid[] payment of legitimate damages resulting
6 from said auto accident.” (*Id.* ¶ 4.)

7
8 Plaintiff’s fraud allegations mostly rely on his assertion that certain Vehicle
9 Valuation Reports (“VVR”) “were the act of intentional fraud.” (*Id.* ¶ 48.) Specifically,
10 on March 10, 2020, USAA determined that Plaintiff’s car was totaled and obtained a
11 VVR from IBS. (*Id.* ¶ 35.) USAA’s VVR did not include equipment Plaintiff’s car had
12 such as a sunroof. (*Id.* ¶ 36.) On March 23, 2020, the Exchange had IBS create another
13 VVR. (*Id.* ¶ 44.) The Exchange’s VVR also did not include features of Plaintiff’s car
14 such as a sunroof and metallic paint. (*Id.*)

15
16 Plaintiff also complains about two rental car quotes he says were “act[s] of
17 insurance fraud.” (*Id.* ¶¶ 52–55, 139–40.) On April 3, 2020, the Exchange sent Plaintiff
18 a settlement offer including an offer for “loss of use.” (*Id.* ¶ 51.) The Exchange stated
19 that the cost to rent an equivalent rental based on Enterprise’s price list was \$38.99. (*Id.*)
20 However, because the price list used “did not include auxiliary costs such as taxes, and
21 other mandatory fees,” Plaintiff alleges that the Exchange “intentionally concealed the
22 true rental cost . . . in a deliberate attempt to mislead the Plaintiff into believing her low
23 rental price of an equivalent vehicle was factual.” (*Id.* ¶¶ 52–53.) And in an April 15,
24 2020 revised loss of use offer of \$54.23 per day, the Exchange “depressed the base rate
25 for an equivalent rental car by using a special ‘COVID-19’ discount rate from AVIS.”
26 (*Id.* ¶¶ 55, 139–40.)

1 Plaintiff asserts eighteen claims against Defendants. His federal claims include
 2 violations of the civil Racketeer Influenced and Corrupt Organization (“RICO”) Act, wire
 3 fraud, mail fraud, extortion, and witness or evidence tampering, and his state law claims
 4 include negligence, insurance fraud under the California Penal Code, fraud, and
 5 actionable deceit. Now before the Court is the Exchange’s motion to dismiss Plaintiff’s
 6 Complaint against it, which includes some of the federal claims, but not all of them.
 7 (Dkt. 45.)

8
 9 After reviewing the Exchange’s arguments that Plaintiff’s claims against it should
 10 be dismissed, the Court has concerns that Plaintiff fails to state a claim on all of his
 11 federal claims. Indeed, IBS’s answer asserts as a defense that Plaintiff fails to state any
 12 claim against it as well. (Dkt. 12 at 102.)

13
 14 First, it appears that Plaintiff fails to sufficiently allege a pattern of racketeering
 15 activity in both his seventh and thirteenth claims. The civil RICO statute makes it
 16 “unlawful for any person employed by or associated with any enterprise engaged in, or
 17 the activities of which affect, interstate or foreign commerce, to conduct or participate,
 18 directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of
 19 racketeering activity.” 18 U.S.C. § 1962(c). To state a civil RICO claim, a plaintiff must
 20 allege facts showing “(1) conduct (2) of an enterprise (3) through a pattern (4) of
 21 racketeering activity (known as ‘predicate acts’) (5) causing injury to plaintiff’s ‘business
 22 or property.’” *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361
 23 (9th Cir. 2005). A “pattern of racketeering activity” requires at least two predicate acts,
 24 though two is not always sufficient because “in common parlance two of anything do not
 25 generally form a ‘pattern.’” *Sun Sav. & Loan Ass’n v. Dierdorff*, 825 F.2d 187, 191 (9th
 26 Cir. 1987) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985)). The
 27 predicate criminal acts must be both “related” and “continuous.” *Allwaste, Inc. v. Hecht*,
 28 65 F.3d 1523, 1527 (9th Cir. 1995). Acts are continuous “if the predicate acts posed a

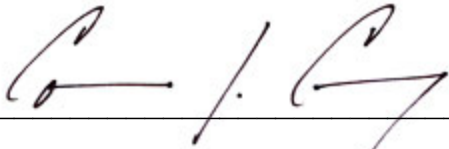
1 threat of continuing activity.” *Sun Sav. & Loan*, 825 F.2d at 193. These requirements
 2 ensure that the RICO statute is not applied “to the perpetrators of isolated or sporadic
 3 criminal acts,” since “Congress was concerned in RICO with long-term criminal
 4 conduct.” *Id.* at 192; *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 242 (1989). For this
 5 reason, “[p]redicate acts extending over a few weeks or months and threatening no future
 6 criminal conduct” are not enough to state a civil RICO claim. *H.J. Inc.*, 492 U.S. at 229.
 7 The Court has doubts that Plaintiff has alleged sufficient facts reflecting a pattern of
 8 racketeering activity in either his seventh or thirteenth claims.

9
 10 Second, it appears that Plaintiff does not have standing to assert his wire fraud,
 11 Hobbs Act extortion, and evidence tampering claims (his eighth through twelfth,
 12 fourteenth, fifteenth, seventeenth, and eighteenth claims) under the United States Code.
 13 Though these criminal offenses “may serve as predicate offenses for a civil RICO cause
 14 of action,” their prosecution “has been entrusted solely to the federal government.” *Lin v.*
 15 *City of Perris*, 2020 WL 5289931, at *5 (C.D. Cal. Apr. 17, 2020), *aff’d*, 2022 WL
 16 2355507 (9th Cir. June 30, 2022) (dismissing with prejudice a plaintiff’s asserted
 17 standalone claims for mail and wire fraud “for lack of a private right of action”); *see also*
 18 *Cobb v. Brede*, 2012 WL 33242, at *2 (N.D. Cal. Jan. 6, 2012), *aff’d*, 517 F. App’x 556
 19 (9th Cir. 2013) (“[M]ail and wire fraud do not, standing alone, result in the right to file a
 20 federal lawsuit.”); *Hacker v. Hacker*, 2015 WL 8780561, at *3 (E.D. Cal. Dec. 15, 2015),
 21 *report and recommendation adopted*, 2016 WL 4254108 (E.D. Cal. Aug. 12, 2016)
 22 (“[C]ourts have consistently found that mail and wire fraud statutes do not confer a
 23 private right of action. . . . Since Plaintiff cannot state a claim directly under the wire
 24 fraud statute, his first claim for relief must be dismissed.”) (collecting cases).

25
 26 Accordingly, Plaintiff is **ORDERED TO SHOW CAUSE** in writing by **August**
 27 **28, 2023** why all of his federal claims should not be dismissed for failure to state a claim.
 28 The Exchange and IBS shall file a response by **September 5, 2023**. Any other defendant

1 may also file a response by that date. Plaintiff may file a reply by **September 12, 2023**.
2 The Court will hold a hearing on these issues on **September 25, 2023, at 1:30 p.m.**
3 The Court also **CONTINUES** the hearing on the Exchange's motion to dismiss [45] to
4 the same date and time.

5
6 DATED: August 14, 2023

7 
8 _____
9 CORMAC J. CARNEY
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28